IN THE CIRCUIT COURT OF COLE COUNTY
NINETEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI

SHOW-ME INSTITUTE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 19AC-CC00391
	)	
OFFICE OF ADMINISTRATION, et al.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 61, et al.,	)	
	)	
Intervenors.	)	

FINAL JUDGMENT AND ORDER

The Court takes up the above styled case for ruling. This case involves a Master Labor Contract between AFSCME, a labor union exclusively representing certain State employees, and various State executive branch agencies. The Master Labor Contract required the Office of Administration on a quarterly basis to provide AFSCME certain personnel information for State employees exclusively represented by AFSCME. AFSCME was required to provide services to these bargaining unit members without regard to whether they were dues paying members of the union. Defendants complied with this contractual requirement and provided AFSCME 12 spreadsheets containing State employee personnel information for bargaining unit members between 2016 and 2018.

Plaintiffs subsequently requested copies of the 12 spreadsheets under the Sunshine Law. Defendants redacted the spreadsheets in accordance with §610.021(13) and an administrative policy before providing redacted copies of the spreadsheets to Plaintiffs. Plaintiffs do not challenge the propriety of the redactions as being in excess of that authorized by §610.021(13), and acknowledge that the policy "constitutes the sort of affirmative step that the Sunshine Law requires for a public governmental body to exercise its discretion to close this sort of information" in ¶46 of the First Amended Petition.

In *United for Missouri, et al. v. Office of Administration, et al.*, Case No 19AC-CC00398, decided December 28, 2020, this Court reviewed a substantively identical request for the exact same records at issue in this matter. Plaintiffs notified the Court of as much in a January 19, 2021 letter, stating that "the fourth point United for Missouri raised in its motion for summary judgment addresses substantially the same issue the Plaintiffs have asserted." As this Court previously held in *United for Missouri*, the terms of the Master Labor Contract that provide for the provision of information to AFSCME do not constitute an "exclusive" right to access the closed records.

Plaintiffs contend, however, that Defendants' provision of unredacted records to AFSCME and subsequent refusal to provide Plaintiffs unredacted copies of the same records constitute a "wink-and-nod" agreement to grant AFSCME the exclusive right to access the closed records "by contract, license or otherwise" in violation of §610.023.2. The plain language of this unambiguous provision does not prohibit the conduct about which Plaintiffs complain because the Master Labor Contract does not provide AFSCME (1) a right, (2) that is exclusive, (3) to access and (4) disseminate, (5) a public record.

Consequently, Defendants have not violated §610.023.2, and Plaintiffs have not alleged any other violation.

Additionally, Plaintiffs cite no evidence to support the existence of this supposed "wink-and-nod" agreement beyond the Master Labor Contract, Defendants' admitted provision of the records to AFSCME in compliance with such contract, and Defendants' subsequent redaction of the records in response to Plaintiffs' Sunshine Law request. These bare facts do not establish that Defendants granted AFSCME a statutorily-prohibited exclusive right to access and disseminate a public record, and to hold otherwise would radically alter public governmental bodies' duties under the Sunshine Law – creating out of whole cloth an eternal and binding waiver out of the discretionary decision governmental bodies are statutorily-authorized to make in response to each Sunshine Law request for records. "[T]he primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to the intent if possible, and to consider the words in their plain and ordinary meaning." *Lewis v. Gibbons*, 80 S.W.3d 461, 465 (Mo. banc 2002). "When the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *State v. Rowe*, 63 S.W.3d 647, 649 (Mo. banc 2002). Despite Plaintiffs' invitation to do otherwise, "[c]onstruction of statutes should avoid unreasonable or absurd results." *Murray v. Mo. Hwy. and Transp. Com'n*, 37 S.W.3d 228, 233 (Mo. banc 2001). Plaintiffs' attempt to curtail the dramatic effects of their desired interpretation by proposing allowing information to be shared with a private entity and subsequently closed only if a public governmental body "can identify a provision of the Sunshine Law that specifically authorizes ongoing confidentiality for the information it

shared," ¶15 of the First Amended Petition, is unsupported by the text of the Sunshine Law and contrary to its plain language.

Plaintiffs contend that "public governmental bodies are *free* to share closeable public information with the public" in the introduction to their Suggestions Opposing Government Defendants' Motion for Summary Judgment ("Plaintiffs' Suggestions," emphasis added). This labeled freedom to share is not "free" at all in the statutory scheme Plaintiffs would have this Court judicially enact. Plaintiffs would have this Court determine that "closeable" public records that have previously been released are, henceforth, no longer subject to closure – imposing a new and consequential legal effect on earlier decisions to release records, completely undermining any notion that the earlier decision was "free," and rendering large swaths of documents forever open beyond the intent the Legislature expressed in the plain language of the Sunshine Law. See *State ex rel. Goodman v. St. Louis Bd. Of Police Com'rs.*, 181 S.W.3d 156, 159 (Mo. App. 2005) ("The legislative purpose of the Sunshine Law is for governmental conduct to be open to public inspection, but not at the expense of the vital personal interests of the citizenry. It is the role of the legislature, and not the courts, to strike the delicate balance between these two competing interests. The legislature conveys this balance and their intent to us through the express words and implied meaning of the statute."). Going forward, Plaintiffs' supposed "free" decision would lead to a less open government as public bodies declined to release closeable records knowing that they would be required to do so forever thereafter into the unknowable future – and would effectuate the very opposite of the public policy to be advanced by Missouri's Sunshine Law.

The Court finds that Defendants have not granted to AFSCME, "whether by contract, license or otherwise, the exclusive right to access and disseminate" unredacted copies of the 12 spreadsheets at issue. To the extent Plaintiffs' believe that the Sunshine Law *should* prohibit the conduct complained of in this matter, they must seek relief from the legislative branch.

While it goes without saying that the Court does not find a knowing violation of the Sunshine Law in this case because no violation occurred, in the first sentence of Plaintiffs' Suggestions, Plaintiffs stated that "[t]his is a case of first impression." This statement is in irreconcilable conflict with Plaintiffs' allegation of a knowing violation in the First Amended Petition.

The Court sustains Defendants' Motion for Summary Judgment. Plaintiffs' Motion for Summary Judgment is denied. All other pending motions are denied as moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Judgment be and is hereby entered in favor of Defendants on all claims.
2. All other claims for relief not expressly granted herein are denied.
3. Costs are taxed to the Plaintiffs.

SO ORDERED this 25 day of May, 2021.

Jon E. Beetem, Circuit Judge - Division 1